

1 IN THE KENTUCKY PUBLIC SERVICE COMMISSION

2
3
4 IN RE: INVESTIGATION:

5 Case No. 2003-00433
6 AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,
7 TERMS, AND CONDITIONS OF LOUISVILLE GAS AND
8 ELECTRIC COMPANY

9 and

10 Case No. 2003-00434
11 AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND
12 CONDITIONS OF KENTUCKY UTILITIES COMPANY

13 * * *

14
15 SWORN STATEMENT

16 OF

17 JAMES W. BREW

18 JULY 29, 2005
19
20

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A P P E A R A N C E S

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COMMISSION:

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1
2 The sworn statement of JAMES W. BREW,
3 taken telephonically in the offices of Goldberg &
4 Simpson, 3000 National City Tower, 101 South Fifth
5 Street, Louisville, Kentucky, on Friday, the 29th day
6 of July, 2005, at approximately 1:35 p.m.

7
8 EXAMINATION

9
10 BY MR. GOLDBERG:

11 Q. Would you state your full name for us.

12 A. My name is James W. Brew, B-R-E-W.

13 Q. And you're also referred to as Jay?

14 A. Yes, that's correct.

15 Q. Okay. And could you tell me your
16 business address?

17 A. It is 1025 Thomas Jefferson Street
18 Northwest, Suite 800, Washington, D.C., 20007.

19 Q. All right, sir. And what is your
20 occupation?

21 A. I'm an attorney.

22 Q. And where do you practice law?

23 A. I'm licensed to practice in District
24 of Columbia and New York.

25 Q. All right, sir. And what is the name

1 of the firm?

2 A. The name of the firm is Brickfield,
3 B-R-I-C-K-F-I-E-L-D, Burchette, B-U-R-C-H-E-T-T-E,
4 Ritts, R-I-T-T-S, and Stone.

5 Q. And do you have an area of expertise
6 that you practice in?

7 A. Yes. Our -- our firm's primary area
8 of expertise and mine is in energy and public
9 utility.

10 Q. All right, sir. And how long have you
11 been practicing in that area?

12 A. Since 1980. That would be 25 years.

13 Q. All right, sir. Are you familiar with
14 a company by the name of North American Stainless?

15 A. Yes. They're -- I've represented them
16 on a number of occasions.

17 Q. Okay. And have you had occasion to
18 represent them prior to September of 2003 before the
19 Commonwealth of Kentucky Public Service Commission?

20 A. Yes.

21 Q. Okay. What type of matters, just
22 generally, had you represented them on?

23 A. North American Stainless intervened as
24 a party in the proposed merger of Louisville Gas &
25 Electric and Kentucky Utilities with Powergen, PLC.

1 Q. Okay. Do you recall generally when
2 that was?

3 A. We did a special contract with
4 Kentucky Utilities in 1998, I think, so it would have
5 been -- I think it would have been in the summer of
6 1998 or thereabouts.

7 Q. All right, sir. And did you do the
8 special contract as a part of the proceedings with
9 KU/LG&E and Powergen?

10 A. No. That was -- we had intervened in
11 the proceeding, and the special contract or the
12 special tariff was filed for approval in a separate
13 docket, I believe.

14 Q. All right, sir. Was it separate
15 years?

16 A. Pardon?

17 Q. Separate years?

18 A. No. I think that -- I think they
19 would have been in the same year.

20 Q. Okay. In the summer of 2003, were you
21 retained by North American Stainless to deal with the
22 special contract between KU and North American
23 Stainless?

24 A. Yes. Well, I had -- it was a new
25 engagement, but the -- let's see. The contract was

1 expiring in I believe the end of March of 2003, and
2 so I was engaged to work with the local counsel on an
3 extension or replacement of that power supply
4 contract with the utility, Kentucky Utilities.

5 Q. Okay. And who was the local counsel?

6 A. Let's see. Bill Jones is the local
7 corporate counsel.

8 Q. All right, sir.

9 A. We're reporting to Nat Adams who's
10 the -- had become the NAS general counsel.

11 Q. Yes, sir.

12 A. And NAS had also engaged Richard
13 Taylor.

14 Q. Okay. Would that be Smitty Taylor?

15 A. That's Smitty Taylor, yes.

16 Q. All right, sir. Tell me generally
17 what your course of action was. And I'm looking at
18 the time frame August-September 2003.

19 A. I believe there had been regular
20 discussions between the NAS technical folks and KU or
21 LG&E's, because they're merged companies -- technical
22 folks for some time up until the expiration of the --
23 of the contract. Initially the regulatory group that
24 I was involved with as local counsel looked at the
25 contract, had some initial discussions with --

1 follow-up discussions with Kentucky Utilities. And I
2 believe we met them at -- at the NAS site to talk
3 about the contract issues.

4 Q. Go ahead, sir.

5 A. The -- I'm trying to think of the time
6 frame. I know we've -- the discussions that we had,
7 they would have been in the summer of 2003.

8 Q. All right. Let me help you a little
9 bit since I have now been in this vineyard a little
10 bit. Mr. Adams has communicated that a complaint was
11 filed in September of 2003.

12 A. Yes. We met with -- we met with KU in
13 August to discuss the issues. It was apparent that
14 we weren't going to get anywhere -- at least apparent
15 to NAS we weren't going to resolve the issues
16 informally, so we filed a complaint I think it was
17 September 23rd of '03.

18 Q. All right, sir. Who was representing
19 KU at the time; do you recall?

20 A. We -- the informal meeting was with
21 their energy marketing folks, a fellow by the name of
22 Charlie Freibert.

23 Q. All right, sir.

24 A. The company had -- the utility --
25 excuse me. I don't want to mix up vague references.

1 KU responded to the complaint by filing a new tariff,
2 what they described as a nonconforming load tariff.

3 Q. Do you have a time frame for that?

4 A. They filed that in October.

5 Q. All right, sir.

6 A. I believe October 8th or 10th.

7 Q. Okay.

8 A. And then we moved to intervene in that
9 docket since they filed a new tariff at the Public
10 Service Commission. And in terms of KU, the
11 attorneys that I dealt with on confidentiality
12 matters and discovery matters were Greg Cornett and
13 Walter Sales.

14 Q. All right, sir. After a complaint was
15 filed and tariff filed, what happened in the cases?

16 A. The -- the complaint docket and the
17 tariff docket were consolidated into a single matter
18 by the Kentucky commission.

19 Q. All right, sir.

20 A. We negotiated confidentiality
21 agreements with the utility concerning discovery, and
22 the utility had filed supporting testimony in
23 response to its tariff. NAS then filed testimony
24 with respect to the proposed tariff. And that took
25 us through the end of '03.

1 In either late January or early
2 February of '04, the utility moved to consolidate our
3 already consolidated dockets on the complaint and the
4 nonconforming load tariff into its general rate
5 proceeding.

6 Q. Okay. And that was the rate
7 proceeding that was filed at the end of
8 December 2003?

9 A. That's correct.

10 Q. Okay. And is that the KU and LG&E
11 rate proceedings?

12 A. That's right.

13 Q. All right. For your ready reference
14 and for your statement, that would be case
15 Nos. 2003-00433, the LG&E rate case, and 2003-00434,
16 the KU case.

17 A. That's correct.

18 Q. Okay. And can you tell me what the
19 reason articulated by the Public Service Commission
20 was for consolidating the cases?

21 A. The -- well, basically revenues. The
22 question before the commission, since this was a new
23 tariff, was what revenues were likely to be produced
24 from the sales to NAS. And the arguments that the --
25 the commission considered, I believe, was that the

1 questions regarding the design of that tariff,
2 whether other tariffs should apply, because one of
3 NAS's arguments had been that rather than adopt a new
4 tariff, the nonconforming load tariff, certain
5 changes should be made into the existing large
6 general service tariff, or the large time of day
7 general service tariff, and given -- which was a
8 tariff that KU proposed to redesign and change the
9 rates for in the general rate proceeding. So given
10 the overlap in terms of the rate design issues and
11 the revenue issues, the commission determined that
12 they should all be dealt with at once.

13 Q. Okay. And when is your best
14 recollection of when that was done?

15 A. NAS had filed an opposition to the
16 consolidation in late February, and I believe the
17 commission issued a decision consolidating the
18 dockets in late February or early March of '04.

19 Q. All right, sir. Between late
20 February, early March of '04 and the first informal
21 conference of the consolidated case, which I'm
22 representing to you is April 28th, 2004, did you
23 conduct any discovery?

24 A. NAS had filed -- we had filed
25 testimony after discovery in the nonconforming load

1 case in the fall of '03. We then filed testimony
2 again focusing on the nonconforming load tariff, in
3 the general rate matter once we were consolidated.
4 And I believe there was some supplemental discovery
5 that we did in March and early April, as well as
6 there were discovery -- there was discovery that KU
7 did of NAS after we filed our testimony. So I
8 believe we did discovery of them in March, filed the
9 testimony in late March, and they were doing
10 discovery of us in early April.

11 Q. Okay. So that I get a clear focus of
12 NAS's position, was NAS participating in the rate
13 cases, as we've defined them, other than on its own
14 particular issue?

15 A. The -- no. The only issues that were
16 raised in both sets of testimony -- there were sets
17 because we used -- had three witnesses, all of which
18 addressed the -- the service specifically in terms of
19 the rate -- in terms of the service for NAS, which
20 involved whether the -- the existing large commercial
21 industrial time of day tariff should be modified,
22 opposing adoption of the nonconforming load tariff,
23 the proposed new tariff, and questions regarding
24 proposed changes to what the utilities called their
25 curtailable service rider, or CSR tariff. Since we

1 were a curtailable customer --

2 Q. Yes.

3 A. -- those -- our -- the service tariff
4 that we were complaining of is -- because it's
5 curtailable service, it's -- we are governed by that
6 service rider. So that was -- those were the issues
7 that we focused on.

8 Q. Fair enough. Do you recall attending
9 the informal conference of April 28, 2004?

10 A. Yes, I do believe I was there.

11 Q. All right. And do you believe you
12 attended all the other sessions attendant with this
13 consolidated case?

14 A. All the on-the-record sessions --

15 Q. Yes, sir.

16 A. -- from the commission?

17 Yes.

18 Q. Now, I'm using the April 28, 2004 as a
19 segue of activity because that's the first day that
20 all the parties are present together.

21 A. Right.

22 Q. Prior to that time, had you had any
23 communication about any issues that ultimately became
24 part of the consolidated case with the staff at the
25 Public Service Commission?

1 A. I don't recall having any
2 conversations directly with the staff prior to the
3 informal hearing.

4 Q. All right, sir.

5 A. I'm trying to remember if I even
6 called staff regarding schedule. To tell you the
7 truth, my recollection from my notes is my
8 conversations were primarily with Walter Sales and
9 Greg Cornett because they were the utility lawyers
10 that I was dealing with on discovery and other
11 issues.

12 Q. All right, sir. Now, let me be more
13 specific with you by giving you the name of some
14 various staff persons at the Public Service
15 Commission, and please communicate to me whether you
16 believe you had any conversations with them, again,
17 on the NAS issues or the underlying consolidated
18 cases prior to April 28, 2004.

19 Mr. Jeff Shaw.

20 A. I don't remember talking to Mr. Shaw.

21 Q. Okay. Mr. Richard Raff.

22 A. I know Richard, and he was the lead
23 counsel in the rate case. I don't recall any
24 specific conversation with him.

25 Q. All right, sir.

1 A. The only reason I would have had to
2 call Richard would have been about the procedures for
3 the rate case when the consolidation came up.

4 Q. Is it a fair statement to say you do
5 not recall any conversations on the merits of NAS's
6 claim or the underlying issues in the consolidated
7 case?

8 A. Yes, that's correct. I don't recall
9 any conversations along those lines at all.

10 Q. Okay. Do you know Mr. Isaac Scott?

11 A. I recognize Mr. Isaac Scott. I mean,
12 I -- from the settlement meetings.

13 Q. Okay. Any conversations with him
14 prior to April 28, 2004?

15 A. No.

16 Q. Okay. Are you familiar with Mr. Faud
17 Sharifi?

18 A. No. I mean, the name is familiar from
19 one of the staff people, but I -- I wouldn't
20 recognize him and I don't recall talking to him.

21 Q. All right, sir. Ms. Andrea Edwards?

22 A. Same. I know I had no conversations
23 before April 28th with her.

24 Q. Okay. Mr. Tom Dorman.

25 A. No, I don't recall speaking with

1 Mr. Dorman.

2 Q. All right. And Mr. Bob Amato?

3 A. I don't recall ever speaking with
4 Mr. Amato.

5 Q. And finally Ms. Beth O'Donnell?

6 A. No.

7 Q. Okay. Now, using that same time
8 frame, let me ask you about --

9 A. This is prior to April?

10 Q. Yes, sir.

11 A. Or April 28th?

12 Q. Yes, prior to April 28th, from the
13 beginning of your assignment, and again also related
14 to just NAS issues and issues in the underlying
15 consolidated cases.

16 A. Right.

17 Q. Okay. I want to ask you now about
18 members of the Public Service Commission.

19 A. Okay.

20 Q. One, do you know Mr. Marty Huelsman,
21 who would have been chairman for part of this time?

22 A. I don't know him.

23 Q. All right. And I trust, then, you
24 never had any conversations with him about these
25 cases.

1 A. No.

2 Q. Okay. Mr. Gary Gillis.

3 A. No.

4 Q. Okay. And Mr. Bob Spurlin.

5 A. No. I didn't have any conversations
6 with any commissioners that weren't actually on the
7 record.

8 Q. All right, sir.

9 A. And they were procedural in nature.

10 Q. At any time?

11 A. No. I've never -- I've never even
12 talked with them apart from being on the record.

13 Q. All right, sir. And just so that our
14 record is clear, the final two commissioners -- we
15 had some overlap of commissioners is why you have
16 more than three.

17 A. Mm-hmm.

18 Q. Is the present chairman, Mark David
19 Goss, no off- the- record conversations?

20 A. No.

21 Q. Okay. And finally Ms. Ellen Williams.

22 A. No.

23 Q. All right. Fair enough. Now, let me
24 take you back to April 28, 2004.

25 A. Yes.

1 Q. I trust you remember being at the
2 informal conference.

3 A. Yes.

4 Q. All right. Tell me as best you can --
5 and I recognize these days will have a tendency to
6 run together somewhat -- of what you recall as the
7 chain of events on the very first day.

8 A. The -- the informal conference was
9 conducted to basically -- they usually are set up,
10 the chain of events for the -- the hearing on the
11 record. The discussion was primarily order of
12 witness, how to proceed, dates for when we would
13 start, and, you know, the process for putting
14 exhibits into -- into the record. There were some I
15 think discussion of the potential for settlement, but
16 those weren't really pursued until the hearing --
17 substantive hearing a week or so later.

18 Q. Okay. That's all you recall of the
19 events of April 28?

20 A. That's -- that's all of my
21 recollection.

22 Q. All right. Do you recall any
23 settlement discussions on the 28th?

24 A. Not on any of the NAS issues, no.

25 Q. Okay. In terms of negotiation

1 discussions on other issues, did you have a
2 recognition that there were any settlement
3 negotiations going on on the 28th?

4 A. I was -- I was not involved in any
5 discussions on the other issues.

6 Q. Okay. Did you have recognition there
7 was some discussion going on?

8 A. My recollection is the utility
9 attorney, Mr. Riggs, gave an up-to-date summary of
10 where they were on things generally in terms of
11 prospects for settlement, but I don't recall if they
12 sat down to actually have any settlement discussions
13 that day.

14 Q. Fair enough.

15 A. The only thing I can say for sure is
16 that none of the NAS issues were discussed that day.

17 Q. Okay. The 28th was a Wednesday. Did
18 you go back to Washington, D.C.?

19 A. I believe I did.

20 Q. Okay. And thus, you were not present
21 on the 29th or the 30th in Kentucky.

22 A. No.

23 Q. Okay. You were not present over the
24 weekend, that would have been Derby weekend.

25 A. No. As much as I would have wanted

1 to, no, because Smitty had -- actually has a very
2 nice box, I'm led to believe. But, no, I was back --
3 I was back in Washington I believe that night.

4 Q. All right, sir. And Monday would have
5 been May the 3rd, Tuesday May the 4th. When do you
6 next remember coming back and participating in these
7 events?

8 A. I believe I came back -- bear with me
9 for just a second. I went to Kentucky -- okay. Let
10 me -- I was in Kentucky for the prehearing conference
11 on the 28th.

12 Q. Okay. I've called that the informal
13 conference.

14 A. The informal conference. I stayed in
15 Kentucky for the 29th to meet with NAS's witnesses
16 and to do preparation for the hearings.

17 Q. Did you have any conversations on the
18 29th with any of the parties?

19 A. No. This was a NAS meeting with NAS
20 counsel and NAS management and the witnesses for the
21 case.

22 Q. All right, sir.

23 A. And then I returned to Washington on,
24 I believe, the night of the 29th.

25 Q. Okay.

1 A. Then I went back to Kentucky on Monday
2 morning, the 3rd.

3 Q. All right, sir. Do you have a
4 recollection of having participated in any discussion
5 on the NAS issues and the underlying consolidated
6 cases on May the 3rd?

7 A. No. On the 3rd, again, was meeting
8 with our witnesses in preparation for the hearing,
9 and also to prepare basically our position on
10 settlement potential for the -- on the NAS questions.
11 But there were no discussions with any parties --
12 other parties. It was just a NAS -- a NAS
13 preparation meeting.

14 Q. Okay. And I take it there were no
15 discussions with the PSC staff or commissioners on
16 that day.

17 A. I don't recall discussions with
18 anybody at the PSC that day.

19 Q. All right, sir. Was there a
20 prehearing conference on May the 3rd, or do you know?

21 A. I do not -- I don't recall it. I
22 thought the hearing was set for the 4th, and we were
23 there for the -- I was up on the 3rd to prepare for
24 the hearings.

25 Q. All right, sir. May the 4th. Tell me

1 what you recall of the first day of hearing.

2 A. The hearing started with going on the
3 record. Chairman Goss basically announced his
4 intention of how he wanted to follow through on the
5 witnesses, the order of witnesses. Mr. Riggs, who
6 was the lead attorney for LG&E and KU, announced that
7 the parties wanted to pursue settlement discussions
8 on various revenue and rate design issues. And after
9 a very brief meeting, the parties adjourned to have
10 settlement discussions.

11 Q. On the 4th or the 3rd?

12 A. No. This would have been the 4th, not
13 the 3rd.

14 Q. All right, sir. So how long were the
15 parties on the record, do you believe? A short
16 period of time?

17 A. My guess, it was about 40 minutes.

18 Q. All right, sir. And that was in the
19 hearing room, correct?

20 A. That was in the main -- that was in
21 the main hearing room. The parties then reconvened
22 in an adjoining hearing room to talk about the -- the
23 issues in the case and -- which loosely were the
24 overall revenues, rate design and the NAS issues.
25 And it was agreed that -- at least the parties agreed

1 that they would deal with the NAS -- NAS issues could
2 be dealt with separately. So the NAS team, including
3 myself, adjourned to a conference room. And we
4 pretty much stayed there all day while the other
5 parties negotiated the rate case.

6 Q. All right. Now, when you say the
7 other parties agreed to separate off the NAS case,
8 tell me the process that you went through.

9 A. I believe that Mr. Riggs primarily
10 managed things. And as the parties sat down, he did
11 sort of a survey of the things that they wanted to
12 talk about.

13 Q. The issues, as it were?

14 A. The issues, yes. The revenue
15 requirement issues, the rate design issues. And then
16 since the NAS issues had been consolidated and no
17 party other than NAS had put in testimony on them,
18 they were viewed as a separate category.

19 Q. All right, sir.

20 A. It was then -- I think Mr. Riggs then
21 proposed -- the parties of the committee as a whole,
22 if you will, that they would address the NAS issues
23 later rather than take up the time when parties --
24 other parties had not provided any input on it
25 because they hadn't testified on it, and there was a

1 general consensus on that. And since -- from NAS's
2 perspective, we had not submitted testimony on the
3 revenue requirement or rate design other than the
4 tariffs that we had addressed. We did not take part
5 in those general discussions.

6 Q. Okay. Did you have a recognition,
7 before the parties broke up, of who the intervening
8 parties were?

9 A. Sure. I mean, we're aware generally
10 of the -- the role of the staff, that there were
11 industrials as a -- customers as a group were
12 represented by a law firm representing the Kentucky
13 Industrial Users group, or KIUC, that there were --
14 there were probably another ten parties involved,
15 including representatives of several communities or
16 counties, low income users.

17 Q. You're fading a little bit.

18 A. Low income users. Someone who was
19 there for the federal government, but I'm forgetting
20 whether it was for the post office or defense
21 facility.

22 Q. How about the attorney general, was he
23 present?

24 A. There was an assistant attorney
25 general who was involved in the discussions, yes.

1 Q. Okay.

2 A. And in terms of the active
3 participants, you know, the active negotiators for
4 the interveners were clearly the AG and the KIUC.

5 Q. All right, sir. What was the role of
6 the staff as part of your observation, at least, on
7 May 4th?

8 A. The staff?

9 Q. Yes, sir.

10 A. Well, the -- the principal point of
11 discussion on -- on most issues involved the
12 respective positions of staff and the utility with
13 the -- the interveners generally taking, you know,
14 views on some or -- some issues, but not all of them,
15 whereas staff would take a position on every
16 contested issue.

17 Q. All right, sir.

18 A. In fact, almost by definition any
19 issue -- the only issues that were contested were
20 ones initially the staff raised.

21 Q. All right. You were with -- the group
22 as a whole met for how long on May the 4th before you
23 were broken off?

24 A. Oh, I would say another hour. It was
25 before lunch before we broke off into a separate

1 conference room.

2 Q. Is it fair to say that that part of
3 the conversation in the morning after the hearing was
4 about definition of issues?

5 A. Yes, definition of issues and what
6 order they would take them up.

7 Q. All right. Did you have any
8 recognition, prior to the time when you were
9 separated, that there was agreement on any issue?

10 A. Well, there certainly were not on the
11 NAS issues, and I'm not aware that there was an
12 understanding on any of the specific issues.

13 Q. Fair enough. Okay. Now, physically
14 everybody started off in the same room. Do you know
15 the name of the room?

16 A. I don't know the name of the room, no.

17 Q. All right. And then you were broken
18 off. Who all went to the separate room?

19 A. Well, the -- the NAS team. Myself;
20 Nat Adams; Bill Jones; Smitty Taylor; Kim McCann is
21 an attorney in Bill Jones' office; and the NAS
22 operations manager, Miguel Sanchez. So it was all of
23 the representatives for NAS. We went into a small
24 conference room in the front of the building.

25 Q. Okay. And who from KU or LG&E?

1 A. Nobody at first, I mean, because they
2 were busy working on the -- the general rate case
3 issues. We pretty much sat there by ourselves for
4 the lion's share of the day.

5 Q. Okay. Do you recall anybody coming in
6 at any time on May the 4th?

7 A. Towards the end of the day -- because,
8 you know, we'd sat there for I think maybe four or
9 five hours, like 4:30 or 5:00 -- we had a brief -- we
10 had a meeting with Mike Beers, Walter Sales, Charlie
11 Freibert, since this was his area of expertise. And
12 I don't think we met with Marty Goss until the -- who
13 was the VP that Mr. Freibert reports to -- until the
14 next day, but I -- I'm not really sure about that.

15 Q. All right, sir.

16 A. We had -- we had an initial discussion
17 on our issues with that group from -- the LG&E group
18 later in the day.

19 Q. How long was that discussion?

20 A. They came in and we talked for about a
21 half an hour. We may have -- we split up -- the NAS
22 team caucused for about a half an hour, and then we
23 met again for maybe another 20 minutes, I believe,
24 the first day.

25 Q. Okay. And you left the building then?

1 A. Then we left the building, yes.

2 Q. What time would you say you concluded
3 on May the 4th?

4 A. 5:30, 6:00.

5 Q. All right. And you did not go back
6 into the larger room for discussion at that point?
7 You left the building?

8 A. Let me think. We -- the parties got
9 together a couple -- we were called in a couple of
10 times where they were just sort of giving a sense of
11 where they were.

12 Q. A report to the group as a whole?

13 A. A report to the group as a whole. But
14 it was -- it was exactly that. It was a report to
15 the group. It wasn't ongoing discussions. And I --
16 I can't recall whether there was a -- we did that --
17 I think we did that at the end of the day before
18 everybody adjourned.

19 Q. Okay. And was there any agreement on
20 any of the issues that you recall being reported at
21 the end of the day on May 4th?

22 A. My understanding at the end of the day
23 is that the other parties had a tentative agreement
24 on all issues. Because when I left at the end of the
25 day, I thought that all of the issues had been

1 tentatively settled except the NAS issues. So it was
2 my understanding that they had agreed on revenue
3 requirement and rate design for -- at least for KU's
4 rates.

5 Q. For KU and LG&E or just for KU?

6 A. Yes. I mean, since we're a KU
7 customer, we really didn't focus on the LG&E issues
8 at all. But my understanding was that they had a
9 general agreement among the active parties on all the
10 issues, except -- leaving only the NAS issues out
11 there.

12 Q. All right. So that I'm clear, was it
13 your understanding there was a tentative agreement on
14 all issues in both rate cases except for NAS issues?

15 A. That was my understanding after that
16 first day, yes.

17 Q. All right, sir. And did you develop
18 that understanding in the last meeting of the day
19 when all persons were together?

20 A. I believe so.

21 Q. All right. Do you recall -- and I
22 know recollection is always tough -- how you learned
23 that fact, who communicated the fact that there was
24 agreement?

25 A. It would have been from a KU lawyer.

1 I'm not sure if it was Mr. Riggs or Mr. Walter Sales.
2 At this point, most of my discussions were with
3 Walter Sales.

4 Q. All right, sir.

5 A. In the general meeting rooms when the
6 parties were all together, Mr. Riggs always led the
7 discussion.

8 Q. Okay. And do you have a sense that
9 Mr. Riggs stood up and made an announcement of a
10 tentative agreement, or an agreement?

11 A. I think there was some discussion of
12 it. We also discussed where things stood with the
13 attorneys for KIUC, Mike Kurtz and Mr. Boehm.

14 Q. And then they all -- well, did the
15 attorney general express agreement, disagreement or
16 anything at that point to the concept -- to the
17 concept of --

18 A. I thought the parties all generally
19 indicated their agreement with the tentative
20 agreement.

21 Q. All right. Did you see any document,
22 written document?

23 A. I did not, no.

24 Q. Okay. And were they circulating any
25 written document, to your knowledge?

1 A. Not one that we saw.

2 Q. All right.

3 A. Not one that I saw anyway.

4 Q. Did you -- as you left, did you have
5 an understanding that somebody was drafting a written
6 document of the agreement of the parties?

7 A. I believe they were working on a
8 document, and I believe KU -- the utility was taking
9 responsibility for putting it together.

10 Q. All right, sir. Anything else you
11 recall from May the 4th?

12 A. Just -- in light of that, just
13 follow-up conversations with Walter Sales on needing
14 to address the NAS issues.

15 Q. Okay. May 5th, 2004, tell me what you
16 recall about that day. That would be Wednesday.

17 A. I believe that -- let's see. I hope I
18 haven't gotten a day ahead of myself. But that
19 morning the attorney general was holding a press
20 conference at the entrance of the building.

21 Q. You're fading a little bit again,
22 Mr. Brew.

23 A. The -- the attorney general was
24 conducting a press conference as we entered the
25 building at the Public Service Commission indicating

1 that there were -- at least from the attorney
2 general's perspective there was no agreement. And
3 the -- the assistant attorney general that was
4 responsible for the case announced that morning that
5 the attorney general was not on board with the prior
6 day's tentative agreement and -- with respect to the
7 revenue requirement, that they were in accord with
8 the proposed rate design and revenue allocation, but
9 could not agree to the rate increase.

10 Q. Was that the rate increase for
11 electricity or was that the rate increase for gas and
12 electricity, or do you recall?

13 A. I don't recall. I was only focusing
14 on the electricity numbers.

15 Q. All right.

16 A. But -- and they had announced that
17 they were not in accord with that. So as of that
18 morning, the -- the sense from the -- the previous
19 afternoon that there was an agreement on all issues
20 was gone because the attorney general had announced
21 that they were in opposition on the revenue
22 requirement.

23 Q. Okay. And what time of the day do you
24 remember the press conference taking place?

25 A. That was the first thing. There were

1 TV cameras there as we walked in at 8:00 in the
2 morning, or 8:30.

3 Q. Okay. Tell me about the rest of your
4 day on May the 5th.

5 A. Since there was an initial discussion
6 of the parties and they reported to the commission on
7 the record --

8 (INTERRUPTED BY PHONE RINGING)

9 A. Excuse me a second. Let me turn that
10 off.

11 Q. Mm-hmm.

12 A. There was an initial discussion on the
13 record of the change with respect to general rate
14 case. It was also -- the parties then went off the
15 record and went back into the settlement room. And
16 after initial discussion of the AG's concerns, they
17 decided to -- again, to break out NAS. And at that
18 point the LG&E team, Mr. Freibert, Walter Sales,
19 Mr. Beers, met with the NAS team to talk about our
20 issues. And we pretty much negotiated back and forth
21 most of that day.

22 Q. And what room were you in?

23 A. The little conference room out in the
24 front of the building.

25 Q. Okay. Did staff participate?

1 A. No.

2 Q. Okay. Just LG&E/KU personnel and NAS
3 personnel.

4 A. That's correct.

5 Q. All right. Did you ever rejoin the
6 group as a whole?

7 A. We would -- we had a series of
8 sessions where we'd exchange proposals, caucus, get
9 back together again. I think that we rejoined the
10 group, the full group once or twice when we were
11 advised that there was sort of a report on the --
12 where things stood. So I think we may have gone back
13 in with the full group once or twice during the day.

14 Q. My understanding that testimony was
15 being given during the course of the day on the 5th
16 in the hearing room to the commissioners. Do you
17 have a recollection of that?

18 A. The -- yes, but I'm not quite sure of
19 the order. The NAS had, as I mentioned earlier,
20 filed testimony. We did not withdraw our witnesses
21 until the following day once we had agreement on the
22 record. Once the impasse became clear with respect
23 to the AG's position, the commission indicated that
24 they were going to proceed with the full rate case
25 and hear all the testimony. And the -- KU began

1 putting on its witnesses, and they were subject to
2 cross by the parties. However, it's my understanding
3 that since all of the parties, other than the
4 attorney general, were in accord with the draft
5 stipulation at that point, that -- I believe only the
6 attorney general actually did cross with the company.

7 Q. Did you participate in the hearings on
8 the 5th or were you negotiating with Mr. Sales, or
9 both?

10 A. We were in attendance at the hearings,
11 depending upon the witnesses. Since Mr. -- for
12 example, Mr. Freibert had testimony on rate design,
13 and so it was sort of in and out. But I think the
14 gist of it was in the morning of the 5th we were
15 sitting through testimony. And in the afternoon of
16 the 5th, we spent the lion's share of the day in the
17 conference room negotiating with the representatives
18 for the utility.

19 Q. Was the staff present at any time?

20 A. Not in the conference room. They were
21 present throughout the day in the -- the hearing on
22 the record for the testimony.

23 Q. All right, sir. Other -- other than
24 seeing them in the hearing room, you did not see them
25 in your meetings, of course.

1 A. No. I think at one break Mr. Raff
2 came into the room and asked how we were respectively
3 doing.

4 Q. Okay.

5 A. Just to see if we were -- had
6 progressed, but he didn't participate in the
7 discussion.

8 Q. Did you come to agreement with LG&E/KU
9 by the close of business on May 5th?

10 A. Depends on how you define close of
11 business. We came to an agreement around 7:00 --

12 Q. Okay.

13 A. -- that evening.

14 Q. Was the larger group still
15 negotiating?

16 A. No, no. We were the last ones in the
17 building.

18 Q. Okay.

19 A. We -- let's see. We were advised at
20 around 5:30 that the building was being locked up and
21 managed to stay in the conference room until about
22 6:00 before we had to leave the building, you know,
23 because they were closing the building. And then we
24 actually discussed some final details standing in the
25 parking lot with the -- the KU and NAS teams.

1 Q. All right, sir. May 6th, tell me what
2 you remember of that. That would be Thursday.

3 A. The evening of May 5th, we had gotten
4 proposed stipulation language affecting the NAS
5 issues. And so we met with NAS early on -- or met
6 with KU early on with respect to that stipulation
7 language. And at that point it was clear that we
8 had -- we had agreement on those issues.

9 We also had a discussion with the
10 attorneys for KIUC on the company's proposal
11 regarding the curtailable service rider, which was
12 being dealt with in the general body of discussions,
13 not in the NAS discussions. And with those issues
14 being settled, the hearing went on the record and the
15 witnesses proceeded. We, or NAS, withdrew its
16 witnesses on the record and indicated our support for
17 the general -- the overall stipulation. And we
18 attended the hearings for the rest of the day, but we
19 did not conduct cross-examination.

20 Q. All right, sir. You were essentially
21 in agreement at that point.

22 A. That's correct. So once we had
23 reviewed the stipulation language reflecting our
24 discussions from the previous evening to confirm that
25 we were actually in agreement, we went on the record

1 and withdrew our witnesses.

2 Q. Okay.

3 A. And then most of the rest of that day
4 involved final presentation of KU's witnesses and the
5 presentation and cross-examination of the attorney
6 general witnesses.

7 Q. Anything else you recall of the events
8 of May 6th?

9 A. No.

10 Q. Okay. I take it you departed for
11 Washington, D.C., either on the 6th or the 7th?

12 A. Just because of the nature of things,
13 I left on the morning of the 7th.

14 Q. All right, sir. Did you return on the
15 morning of May 12th for any proceedings?

16 A. Yes. A side issue had come up
17 regarding -- oh, I believe it was the -- an energy
18 credit that affected all of the curtailable service
19 rider customers. And so there was a -- let's see.
20 There was a proposal for how to address this one
21 single issue that was made by KU. The parties met on
22 the record and then went -- adjourned to the -- for
23 lack of a better word, the settlement room, all of
24 the parties together.

25 Q. Mm-hmm.

1 A. And various parties, including NAS,
2 made presentations on -- on the one issue. It was --
3 I think they -- in doing the joint stipulation, they
4 had put in a suggested solution, but it wasn't one
5 that the parties had agreed on. There was a proposal
6 to do it differently, but the parties had agreed in
7 the stipulation that it would change only if staff
8 and all of the parties were in agreement to change
9 it. So there was a discussion on the -- in the
10 hearing room -- in the settlement room of all the
11 parties on that one issue.

12 Q. Was that resolved?

13 A. It was resolved by not changing the
14 stipulation, so the change -- the change that NAS had
15 advocated was not made to the stipulation.

16 Q. How long did the meetings of May 12th
17 occur for?

18 A. I think it was -- didn't take more
19 than the morning.

20 Q. Okay.

21 A. My guess is maybe two hours.

22 Q. All right, sir. And then you departed
23 town after that?

24 A. That's correct.

25 Q. Okay. Do you recall any other

1 meetings of any kind on NAS issues or any of the
2 other issues in the rate cases between May 12th and
3 the final ruling by the Public Service Commission?

4 A. No. We had follow-up discussions with
5 KU on lesser nitpicky issues, I guess you'd call it,
6 but I don't recall any conversations beyond that. In
7 fact, I was out of the country for a week and a half
8 after that.

9 Q. All right, sir. Do you recall getting
10 the ruling from the Public Service Commission?

11 A. Yes.

12 Q. Okay. And can you put a time frame on
13 that of approximately mid June 2004?

14 A. I think that's right.

15 Q. All right.

16 A. Because the rates were supposed to go
17 into effect in July.

18 Q. All right, sir. Now, from April 28th,
19 2004 to the time you got the ruling, did you have any
20 contact with the public service commissioners other
21 than in the hearing room where testimony was actually
22 taken?

23 A. No, I've never had any discussions
24 with them outside of the on-the-record discussions.

25 Q. All right, sir. And let me ask you

1 that same question with regard to staff and include
2 not only hearing room, but negotiation room.

3 A. No. As far as -- my recollection is
4 once the joint stipulation was filed in front of the
5 commission, I don't recall any discussions with staff
6 after that.

7 Q. The question was for both commission
8 and staff from April 28th, 2004, through June 15th.

9 A. Right. Absolutely without -- no.
10 There were no further discussions with staff or the
11 commission.

12 Q. Okay. So other than -- so that I'm
13 clear, I think we're -- our record is clear with
14 regard to commissioners, a little unclear with regard
15 to the staff. From April 28, 2004, first informal
16 conference, to the time you got the ruling of the
17 Public Service Commission in mid June, you had no
18 conversations with the staff other than in the
19 hearing room or in the negotiation room amongst other
20 parties.

21 A. There were -- I mean, there were
22 always just greeting conversations in the hallways
23 with the parties, including staff, as you went in or
24 out, but not -- no discussions on anything related to
25 the case.

1 Q. All right, sir. Fair enough. Now,
2 while one can disagree about the meaning of the terms
3 "collusive" and "inappropriate," as a lawyer and
4 especially a lawyer who appears in front of
5 administrative tribunals, I'm sure you're familiar
6 with the concept of ex parte.

7 A. Sure.

8 Q. Did you witness any ex parte
9 communications in any of the proceedings that you
10 attended from April 28, 2004, through the issuance of
11 the ruling June 15th, 2004?

12 A. No.

13 Q. All right, sir.

14 A. If you're going to break it down
15 between staff and commissions --

16 Q. Let's do it that way. First with the
17 commission.

18 A. No, because I'm not -- I didn't
19 witness any conversations with anybody with the
20 commissioners other than when they were standing at
21 the -- you know, the -- in the hearing room.

22 Q. Okay. With regard to the staff.

23 A. No. There were -- like I said, there
24 were always, you know, social conversations in the
25 hallway, but I don't recall any conversations with

1 anybody through that period that would have been --
2 fall under any definition of an inappropriate
3 discussion.

4 Q. All right, sir. And I take it that
5 would also pick up any ex parte discussion.

6 A. Yes.

7 Q. Okay. And then finally -- and again,
8 "inappropriate" and "collusive" are subjective terms.
9 Did you yourself witness any conduct which you
10 believed to be inappropriate or collusive behavior
11 with regards to the staff from April 28, 2004 until
12 issuance of decision in mid June 2004?

13 A. No.

14 Q. And I take it the same would be -- you
15 would have the same answer with regard to the
16 commissioners.

17 A. That's correct.

18 MR. GOLDBERG: All right, sir. I
19 appreciate very much your time, and that will
20 conclude the statement.

21

22 (STATEMENT CONCLUDED AT 2:25 P.M.)

23 * * *

24

25

[illegible]

I, ELLEN L. COULTER, Notary Public, State of Kentucky at Large, hereby certify that the foregoing sworn statement was taken at the time and place stated in the caption; that the appearances were as set forth in the caption; that prior to giving testimony the witness was first duly sworn by me; that said testimony was taken down by me in stenographic notes and thereafter reduced under my supervision to the foregoing typewritten pages and that said typewritten transcript is a true, accurate and complete record of my stenographic notes so taken.

I further certify that I am not related by blood or marriage to any of the parties hereto and that I have no interest in the outcome of captioned case.

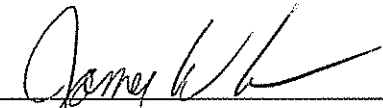
My commission as Notary Public expires
November 5, 2007. *10/14*

Given under my hand this the 10th
day of August, 2005, at Louisville,
Kentucky.

Ellen Kauter

ELLEN L. COULTER
NOTARY PUBLIC

1 I, the undersigned, ~~James~~ JAY BREW, do hereby
2 certify that I have read the foregoing sworn
3 statement, and that, to the best of my knowledge,
4 said sworn statement is true and accurate, with the
5 exception of the corrections, if any, listed on the
6 errata sheet.

7
8 
9 ~~James~~
JAY BREW

10
11 Subscribed and sworn to before me this 30th
12 day of September, 2005.

13
14 District of Columbia) S.

15
16 
17 NOTARY PUBLIC

18
19 My commission expires June 30, 2009

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LOUISVILLE, KY 40203

ERRATA SHEET

NAME JAY BREW DATE OF DEPOSITION 7/29/05

After having read my deposition, I wish to make the following changes:

Page 3 Line 23
Change Add "the" before "District"
Reason for change grammar

Page 6 Line 24
Change delete "with a", replace with
Reason for change grammar

Page 8 Line 22-33
Change delete "in response to"; replace with "in support of"
Reason for change accuracy

Page 10 Line 5
Change replace "into" with "to"
Reason for change grammar

Page 20 Line 7
Change replace "was meeting" with "I met"
Reason for change grammar

Page 23 Line 20
Change add "a" before "defense"
Reason for change grammar

Page 25 Line 10
Change replace "were" with "was"
Reason for change grammar

Page 26 Line 12
Change replace "Goss" with "Gallus"
Reason for change accuracy

Page 32 Line
Change add "the tentative agreement concerning the" before "general"
Reason for change accuracy

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ERRATA SHEET

NAME JAY BREW DATE OF DEPOSITION 7/29/05

After having read my deposition, I wish to make the following changes:

Page 32 Line 18
Change add "Howard Bush" after "Walter Sales"
Reason for change omission

Page _____ Line _____
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